IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Bail Appl..No. 6758 of 2007()

CP.132/2007 of J.M.F.C.,KASARAGOD
CR.NO.214/06 OF MANJESHWAR POLICE STATION.

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PETITIONER/ACCUSED

DEVANANDA @ BABY,
S/O BOJA POOJARI, 45/06,
KANNAIPPARA HOUSE, BEKOOR P.O.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6758 OF 2007

Dated this the 1st day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution under the Kerala Abkari Act. The petitioner was not arrested at the crime stage. Investigation is now complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered. The learned Magistrate, it would appear, has chosen to issue summons under Sec.204 of the Cr.P.C. The petitioner is willing to appear before the learned Magistrate and seek regular bail. But the petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits and expeditiously, the offence is being one triable exclusively by a Court of Session.

2. It has time and again been repeated that the mere fact that the offence is triable exclusively by a Court of Session will not justify the abdication of jurisdiction by the learned Magistrate under Sec.437 of the Cr.P.C. The learned Magistrate is bound to consider the application for bail on merits. In **Sukumari v. State of Kerala** (2001 (1) KLT 22) the position has been made clear.

3. In the facts of this case it is seen that the learned Magistrate has, alertly I must assume, exercised the discretion to issue only a summons and not a warrant of arrest against the petitioner. I find no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. The apprehension of the petitioner that the application for bail may not be considered expeditiously is also without any substance. Sufficient general directions have already been issued in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. This bail application is, in these circumstances, dismissed; but with the specific observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after

giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself in the light of the two decisions referred above.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge